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CURRENT TOPICS

Lord Justice Birkett on Law and Social Change

LORD JUSTICE BIRKETT'S review of Professor FRIEDMANN'S "Law and Social Change in Contemporary Britain" is the leading contribution to the *Modern Law Review* for July, 1952. Praising the value of time for contemplation when pursuing the profession of the law, he contrasts the description by Sir John Fortescue (Chief Justice of the King's Bench from 1442 to 1460) of a judge's life—sitting from eight to eleven, then studying the law, reading Holy Scriptures or merely contemplating—with the "plain black robes and grinding work" of a modern judge of the Court of Appeal, as recently described by LORD ASQUITH OF BISHOPSTONE. For practitioners the most interesting part of the review is the outline presented by Lord Justice Birkett of such fairly recent developments in the law as the wide extension of the manufacturer's liability to the consumer, as laid down in *Donoghue* v. *Stevenson* in 1932. He states Professor Friedmann's conclusion to be that "a whole series of torts, headed by negligence, and concerned principally with the liability of manufacturers, occupiers of land and other property owners, are slowly but inevitably converging into a broad general principle of legal responsibility towards the public, flowing from the control of property." Lord Justice Birkett regrets the high price of the book (37s. 6d.) as possibly precluding young lawyers from buying it, and says that the book ought to be in the library of every lawyer.

Adoption: New County Court Rules

ON 1st August there will come into operation a new set of rules (S.I. 1952 No. 1258) made under s. 8 of the Adoption Act, 1950, to govern procedure in applications under the Act to a county court. The rules replace with amendments the 1949 rules, which, though made under the 1926 Act (as amended), have hitherto continued in force under the 1950 Consolidation Act. The 1950 High Court Rules (pre-consolidation) still remain; so do the 1949 Summary Jurisdiction Rules, although the latter have been amended by S.I. 1952 No. 554 in such a way as to make the procedural provisions in all inferior courts having jurisdiction in adoption proceedings correspond in essentials, the High Court alone remaining aloof from changes which are apparently considered, at least in some quarters, as improvements. Thus, an inferior court can now entertain a second application for an adoption order by the same applicant in respect of the same infant, notwithstanding that there has been no substantial change in the circumstances, provided that the first application was not dismissed on its merits (C.C.R. 5; S.J.R. (1952) 1). In the High Court it is still provided that no second application shall be proceeded with unless the judge is satisfied of a substantial change in the circumstances since the previous application (H.C.R. 4). Amendments incorporated in the new C.C.R. 7, 9 and 10, and matched by S.J.R. (1952) 2 and 3, secure that an infant of appropriate age and understanding shall be informed of the application for his adoption, and of the nature and effect of an adoption order. Such an infant is not in future to be a party to county court proceedings,

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but his personal attendance at the hearing will be required, and the various forms of notice have been revised accordingly. The court may now add as respondent any person who in its opinion ought to be so added. It will be remembered that in the High Court the only formal parties to the originating summons are the applicant and the infant, but High Court proceedings, like those of the inferior courts, are in fact notified to persons whose consent is required, to the welfare authority, and to any adoption society concerned in the arrangements. And, while the High Court procedure does not imperatively require the infant's personal attendance at the hearing whatever his age or understanding, it is among the duties of the guardian *ad litem* in all courts to ascertain and report the infant's wishes (if any) and in the High Court the guardian is normally the Official Solicitor. Thus is the policy of the Act effectuated with, it seems to us, a little less uniformity of procedure than is convenient for practitioners.

Applications under s. 23 of the Matrimonial Causes Act, 1950

THE following notice is published at the request of the Senior Registrar of the Divorce Registry: "The attention of solicitors is called to the fact that in many instances applications have come before the court in which the real issues for determination are not clearly established or the means of the parties agreed. In such cases adjournments have frequently been necessitated and extra costs and delay involved. It is pointed out that the parties can apply to the Registrar by summons for directions by which, *inter alia*, discovery or particulars could be asked for. This should be done in all proper cases, and failure to do so may involve the party who should have made such application and failed to do so in being condemned in any costs thrown away."

Solicitors and Accountants

IN a world where it becomes increasingly difficult to contain specialised human activities in watertight compartments it is encouraging to find that professional interest is growing in the definition of functions of the different professions. An article by Mr. G. F. SAUNDERS, F.C.A., headed "The Accountant's Relations with the Business World," in the *Accountant* of 12th July, examines, *inter alia*, the relation between the legal and the accountancy profession. "As far back as 1874," the writer states, "attempts were made to provide a distinction between the work which was appropriate to lawyers and that which was appropriate to accountants, but although steps were taken to ascertain how this might be defined, and many other attempts have been made since that date, it has still not been possible to arrive at any decision. None the less, accountants and lawyers in all parts of the world work in close harmony, lawyers endeavouring to avoid incorrect accounting and accountants to avoid bad legal advice. The accountant should appreciate when to go to a solicitor or to advise his client to do so, and vice versa." This is excellent sense, and it only remains to add that so long as members of either of these professions refrain from work which is exclusively by the Solicitors Act, 1932, or the Companies Act, 1948, or any other statute the function of the other, a good foundation for co-operation is laid.

Articled Clerks and Deferment

THE maximum period of deferment of National Service allowed to those who enter into articles of clerkship for 4½ or five years is to be six years from the date of entry into articles. This news is given in the July issue of the *Law Society's Gazette*, which adds that the articled clerk will thus be allowed at least three attempts at the Final Examination, if necessary. If, however, the clerk fails to pass the Intermediate Examination or to gain exemption from it by the end of his fourth year of service under articles, he will not be allowed any further deferment after the expiration of his articles. Similar principles will apply to those articled for three or four years. These rules are to come into effect in respect of the Intermediate Examination to be held in November, 1952, and will be subject to the overriding condition that in no case will deferment be granted which will enable a clerk to pass out of liability for National Service. The age at which a man passes out of liability is his twenty-sixth birthday.

Music and the Bar

THE ancient Middle Temple Hall, where *Twelfth Night* was produced before Queen Elizabeth I, was the scene on 7th July of a concert of classical music by the Bar Musical Society, given in the presence of QUEEN ELIZABETH, the Queen Mother. The Bar Musical Society is a new society for all members of the Bar and it is intended that performances should be given of works that are not commonly heard in London's concerts. The concert was an inaugural concert, and the MASTER OF THE ROLLS as President commended the society to the audience. The Haydn Orchestra conducted by Mr. HARRY NEWSTONE played works by Arne, Haydn and Mozart, and critics report that the acoustics of the old Hall have much in common with the Festival Hall in its freedom from echo, but the resonance is perhaps greater. It is pleasing to discover that the Bar use what little leisure is given to them not, as popularly thought, in mere relaxation, but in that activity in other fields which is the best form of recuperation. It is to be hoped that the society will not fail to notice the works and talents of its own members. Possibly research will discover a new Fred Weatherly, who combined a successful career at the Bar with that of an even more successful composer of songs. As the Bench is apparently not excluded from membership it is relevant to note that it is reported that Mr. Justice OLIVER, who plays an Amati violin which formerly belonged to the Queen Mother, pursues serious studies of the violin.

A Revolution in Legal Education

THE new practical system of training for both branches of the legal profession planned by Mr. S. N. GRANT BAILEY, Director of Legal Studies, for operation at the Southampton University is the subject of a detailed description by Mr. Bailey, from whom we gratefully acknowledge its receipt. The three-year degree course will include Roman Law and Jurisprudence only as part of the subject of Comparative Law, and the rest of the syllabus will have a practical basis. After the course, it is suggested, an articled clerk would be articled for three years, and a bar student would have one year in a solicitor's office, followed by a year as a pupil in chambers. Then students would return for the sixth year to the Law Faculty for the Final Examination, which would include among its subjects industrial law, landlord and tenant, including rent control, preventive law, and professional ethics. Articled clerks would in addition take conveyancing and magisterial law, and bar students would take construction of statutes and documents and advocacy. Mr. Bailey looks forward to the vocational examination being administered by a Joint Examination Board comprised of The Law Society and the Inns of Court. A two-year course of preparation for The Law Society's Final Examination is to be commenced at Southampton University in October, 1952. Mr. Bailey's experiment is, as he claims, unique. It is also revolutionary, and those who have the cause of legal education at heart will wish Mr. Bailey success in his stated aims of benefiting the court, the client, and the lawyer starting on his career.

CLERK RETIRING WITH JUSTICES

As was said in an article on this subject which appeared at 111 J.P. 607, the question whether the clerk should accompany the justices when they retire to their private room to consider their decision is often discussed, and reveals considerable differences of opinion. The last few years have seen a thorough overhaul of the administration of justice in magistrates' courts, and this problem has not escaped consideration, though statutory guidance is still lacking.

In 1944 a Departmental Committee, which had been appointed in 1938, rendered its report to the Home Secretary. This report became known as the Roche Report, being so named after Roche, L.J., the chairman of the committee, and dealt with the whole subject of justices' clerks, including their duties, and certain changes in the law and practice which the committee considered desirable.

This was followed in 1948 by the report of the Royal Commission on Justices of the Peace, which was appointed in 1946 under the chairmanship of du Parcq, L.J. These two reports formed the basis on which the Justices of the Peace Act, 1949, was founded, although it is fair to say that not all the recommendations of these two bodies were in fact adopted by the statute.

To return to the question of whether or not the clerk should accompany the justices to their retiring room, this was one of many matters which were most carefully considered by the Roche Committee. Paragraph 66 of their report reads as follows:—

> "The retirement of the clerk with his justices at the end of a hearing is not infrequently made a matter of criticism . . . We, however, regard it as entirely proper and natural that justices may wish their clerk to retire with them, but this is a matter for the discretion of the justices, and it is only on their request that their clerk may accompany them. He has his notes of the evidence if it is desired to refer to them, he knows the various penalties and modes of treatment for the particular matter in hand and, though he should not, unless consulted, advise as to the course to be adopted, it is both admissible and proper for his bench to ask and be told out of his experience what are usual or proper measures to be adopted according to the practice of that bench or other benches. Such an amount of guidance tends to reasonable uniformity in sentences and to the due administration of justice. We think the true conclusion is this: that if the relationship of bench and clerk has been properly regulated in court, there will be no grounds for criticising the clerk's retirement with the justices. But if the clerk has been permitted to act as if he were the court itself, then it is small wonder if his retirement is resented. There are few things more detrimental to justice than this, for the reason that it is universally and naturally regarded as an injustice by the parties concerned if their cases are determined by a person who has no right or duty to determine them."

In view of this clear and reasoned recommendation, the remarks of Lord Goddard, C.J., in *R.* v. *East Kerrier Justices; ex parte Mundy* [1952] 1 T.L.R. 1618; 96 SOL. J. 428, decided in the Queen's Bench Division on 29th May, 1952, come as something of a bomb-shell. That was a case in which the clerk retired with the justices, after which he returned to the court, spoke to a police officer, received a piece of paper from him, and took it back to the retiring room. Neither the defendant nor others present in court knew what the paper contained, which, in fact, was the particulars of a previous conviction of the defendant. On the return of the justices into court they announced that they convicted the defendant, and called for evidence of any previous conviction, which was given. On this it was held that it could not be said that justice had manifestly been seen to be done, and the conviction must be quashed, though possibly the decision might have been otherwise if the justices had announced in court that the only information on the paper was the fact of that conviction and that they had made up their minds before then to convict (see *Davies* v. *Griffiths* (1937), 53 T.L.R. 680).

Pausing here for a moment, no one could reasonably challenge the propriety of quashing the conviction, nor could the action of the clerk be for a moment supported. Lord Goddard, however, having delivered himself of the first judgment, proceeded to say:—

> "Although I cannot for the moment trace the authority, I think it has certainly been said more than once in this court that it is not right that the justices' clerk should retire with the justices. It has been said over and over again that the decision must be the decision of the justices, not the decision of the justices and their clerk, still less the decision of the clerk, and, if the clerk retires with the justices, people will inevitably form the conclusion that the justices' clerk may influence the justices, or may take some course which it is for the justices alone to take. The justices can always send for the clerk if they require advice on a point of law because that is what the clerk is there for, but it is not desirable, and it is not, I would say, regular, for a clerk to retire with the justices as a matter of course at the time they are considering the facts. He should remain in the court until the justices either return into court or send for him. Whether we should have quashed the conviction on the ground that the justices' clerk retired with them (although I believe it has been done in one case), I need not say. But we think it is undesirable and we hope that in future justices' clerks will not retire with their bench unless their advice is required."

This, it is at once apparent, is not in accord with para. 66 of the Roche Report. It was, of course, *obiter* and as such binding on nobody, but none the less it demands careful consideration and must carry great weight, coming as it does from the lips of the Lord Chief Justice. It may be, of course, that the Lord Chief Justice had not in mind the recommendations of the Roche Committee; it may even be that he overlooked some of the practical implications of a literal compliance with his views; but still every bench of justices is faced now with the necessity of deciding for themselves whether to follow the recommendations of the Roche Report or the forcibly expressed views of the Lord Chief Justice. The Justices of the Peace Act gives no guidance, so presumably the Legislature at any rate considered it undesirable to lay down a definite rule, but to leave the matter to the discretion of individual benches. The *Justice of the Peace*, in the article above referred to, gives some sound advice to the clerk and continues: "If he so conducts himself, the justices will almost certainly be glad to have him always at hand." It is clear, therefore, that that journal at that time supported the Roche Report in this connection, and its reasons for doing so appear thoroughly sound.

The writer of the present article is a whole-time justices' clerk in a very busy division. It has for very many years been the practice in his division for the clerk invariably to retire with the justices, and this with the full approval of the

justices, and the writer has not the slightest hesitation in saying categorically that this has militated very strongly towards the better administration of justice. Cases have arisen many times where, from a legal point of view, the ultimate finding has rested entirely on the question of criminal intent or some other specific element in the offence charged —and in the retiring room it has at once become obvious that some at least of the justices have completely missed the point. Surely it is only right that the clerk should point out to the justices the point at issue and direct their attention to the evidence, or lack of evidence, relevant to that point.

Again, it has frequently happened that the significance of some vital piece of evidence has completely escaped the justices, and on such occasions the writer has felt bound to invite their attention to it—often with the result that a defendant who would otherwise have been convicted has in fact been acquitted. Then, also, what of the onus of proof? The writer well remembers a case some years ago in which the evidence for the prosecution was far from strong. In the retiring room the chairman asked his colleagues whether they were satisfied that the defendant was proved to be guilty, and one of the other justices immediately said: "Well, the case is not strong, but he has not proved he is not guilty, so I should convict him." In yet another case the chairman in the retiring room said: "There is a reasonable doubt in this case, but I do not propose to give the defendant the benefit of it." There have been several cases within the writer's personal experience where one of the justices has started to relate to his colleagues his personal knowledge of the defendant's past and family history, and it has only been the intervention of the clerk which has checked him. These cases should be sufficient to show how essential it is in practice, whatever the theory may be, that the clerk should be present throughout the deliberations of the justices in order to see that relevant matters only are considered, that the evidence, and nothing but the evidence, should be taken into account and that fundamental matters of law such as the onus of proof are properly applied.

Further, on the question of sentence it is clearly the duty of the clerk to see that the maximum for the offence is not exceeded. What, one wonders, would the Lord Chief Justice say of a clerk whose justices sentenced to six months' imprisonment a man convicted of an offence for which the maximum punishment was a fine of £20? It is certain that such a clerk would not escape criticism, but would such criticism be fair if the clerk were excluded from the justices' deliberations as to sentence? It is a poor answer to say that before retirement the clerk should inform the justices of their maximum powers of sentence, for such advice might well be taken as a suggestion that they should award the maximum. Again, an explanation as to the power to commit for sentence under s. 29 of the Criminal Justice Act, 1948, cannot be given in only a few words, and anything approaching a lengthy confabulation between justices and clerk in open court is as much open to objection as the retirement of the clerk with the justices to their private room.

Given a conscientious and trustworthy clerk, in the writer's opinion there is no danger of a miscarriage of justice through his accompanying the magistrates to their retiring room. On the contrary, his very presence is a safeguard. Lest it be said that since the judge does not retire with the jury so the clerk should not retire with the justices, let it be pointed out that the judge in his summing-up gives the jury far greater guidance than any clerk, whether he retires with the justices or not, can or should ever give them; jury and justices are laymen, and both require guidance. But in the writer's opinion it is only an experienced justice who will know when guidance is required, and the less experienced a justice may be the more essential it is that guidance should be given.

But the quandary still remains: should the justices act upon the recommendations in para. 66 of the Roche Report, or the *dictum* of the Lord Chief Justice? Each bench of justices must solve the problem in its own way, bearing in mind that justice must not only be manifestly seen to be done; it must also in fact be done.

A Conveyancer's Diary

MORTGAGEE'S POWER OF SALE: POSITION OF BUILDING SOCIETIES

BEFORE 1939 the duties of any mortgagee, whether an individual or a building society, in relation to the mortgagee's power of sale were quite clear. They were defined by Kay, J., in *Warner* v. *Jacob* (1882), 20 Ch. D. 220, at p. 224, in a passage which is always quoted in this context: "... a mortgagee is, strictly speaking, not a trustee of the power of sale. It is a power given to him for his own benefit, to enable him the better to realise his mortgage debt. If he exercises it *bona fide* for that purpose, without corruption or collusion with the purchaser, the court will not interfere, even though the sale be very disadvantageous, unless indeed the price is so low as in itself to be evidence of fraud." That was the position whether the power of sale which was exercised was the statutory or an express power (Coote on Mortgages, 9th ed., vol. 2, p. 927).

Then, in 1939, there was enacted the Building Societies Act of that year, which by s. 10 provides that "where any freehold or leasehold estate has been mortgaged to a [building] society as security for an advance, it shall be the duty of any person entitled by virtue of the mortgage to exercise any power, whether statutory or express, to sell the estate, to take reasonable care in exercising that power to ensure that the price at which the estate is sold is the best price which can reasonably be obtained; and any agreement, if and in so far as it relieves, or may have the effect of relieving, a society or any other person from the obligation imposed by this section, shall be void."

The effect of this section was considered in *Reliance Permanent Building Society* v. *Harwood-Stamper* [1944] Ch. 362, the only decision so far reported on this important provision, and one to which insufficient attention has so far been given. A building society to which premises had been mortgaged sold them, and the mortgagor claimed against the society that the sale had been effected in breach of s. 10. It was argued for the building society that s. 10 had no particular meaning or effect, and that it was a mere reminder to building societies of their pre-existing reponsibilities, and a mere résumé for the comfort of mortgagors of their rights in this matter. On the other hand, it was argued for the mortgagor that the section had the effect of imposing on building

societies an even higher liability than that which was laid on fiduciary vendors generally, such as trustees for sale and tenants for life, and involved building societies in responsibility for the consequences of even honest errors of judgment, i.e., that it introduced into the relationship of mortgagor and mortgagee, if the mortgagee were a building society, the common-law concept of negligence. Vaisey, J., adopted neither of these extreme views: in his judgment a building society, when exercising its power of sale *qua* mortgagee, is by s. 10 merely added to the list of fiduciary vendors and, subject to certain qualifications, the same considerations apply to the exercise of a society's power of sale as would apply to an ordinary trustee for sale, or trustee with a power of sale, or to a tenant for life or other limited owner exercising a power of sale under the Settled Land Act, 1925.

The three qualifications were these. First, when a building society sells under its power it is clear that it can consult its own convenience as regards the time of sale: there is no duty on the society to "nurse" the property in order to obtain a better price at a later date. Secondly, the building society's position must be qualified by reference to s. 101 of the Law of Property Act, 1925, which gives a mortgagee a very wide discretion regarding the mode of sale. Under this section a mortgagee may, amongst other things, sell the mortgaged property by public auction or by private contract, either together or in lots, and subject to such conditions respecting title or other matters as he thinks fit; and Vaisey, J., held that there was nothing in s. 10 of the Building Societies Act, 1939, to make s. 101 of no effect so far as building society mortgages were concerned. Thirdly, and even more important, s. 106 (3) of the Law of Property Act, 1925, provides that a mortgagee shall not be answerable for any involuntary loss happening in or about the exercise of the statutory power of sale conferred by that Act, or any trust connected therewith, or (in the case of a mortgage executed after the 31st December, 1911) of any express power of sale contained in the mortgage deed. A building society thus has the benefit of the protection of that subsection.

That is the general position. Coming down to detail, Vaisey, J., held on the evidence in the case before him that the officer of the society who effected the sale of which the mortgagor complained had not taken "reasonable care to ensure" that the price he obtained was the best price which could reasonably be obtained, and he expressed dissatisfaction with the way in which the society had dealt with the matter. In the learned judge's view, the society should have kept a more careful record of the various steps taken in connection with the mortgaged property than was done. "I think," he said, "there should have been a properly documented file to show exactly how they were, during the period following their entry into possession, endeavouring and intending to carry out their duties under this section. In my view, a building society must now take in this connection as much care as a trustee has always had to take in relation to trust property, so that, just as when a trustee is challenged by the beneficiary to account for what he has done, so I think a building society must be prepared, when challenged by the mortgagor, to show exact particulars of the care which he has taken to make sure that the price which has been obtained for the property is a price on which no advance was available at the moment."

There is doubtless no need to remind the appropriate officer of any building society of repute of these words; but there is another and perhaps even more important point of view from which s. 10, as now interpreted, has to be considered. As between mortgagor and mortgagee, the position of a building society-mortgagee exercising its power of sale may be equated, subject to the qualifications already referred to, to that of any one of a number of specified fiduciary vendors; but as between the society and a purchaser from the society, the position is not, and cannot be, the same.

In the case of sales by a tenant for life or statutory owner it is expressly provided that a purchaser dealing in good faith with such is, as against all parties entitled under the settlement, conclusively taken to have given the best price or consideration that could reasonably be obtained by the tenant for life or statutory owner (Settled Land Act, 1925, s. 110 (1)). The interests of the beneficiaries are then shifted to the capital moneys. In the case of sales by trustees for sale there is no provision exactly analogous to s. 110 (1) of the Settled Land Act, 1925, but s. 17 of the Trustee Act, 1925, goes some way towards affording the purchaser from trustees for sale the same sort of protection that is afforded to purchasers from tenants for life and statutory owners by s. 110 (1) of the Settled Land Act, 1925. In the case of a purchaser from a building society there is nothing like this at all: he is completely unprotected and, having regard to the decision in *Harwood-Stamper's* case, he can only find safety in satisfying himself that the purchase price which he is paying is the best price which can reasonably be obtained for the property at the time of the sale. This may be a heavy burden. It may, indeed, be so heavy in some cases as to scare off potential purchasers. If that should be so it would not be the first time that legislation enacted with the intention of protecting the interests of a class of the community should turn out to have had a completely contrary result.

"A B C"

Landlord and Tenant Notebook

CONTROL: THE CONTINUED APPLICATION PROVISION

DISCOVERIES and inventions have been known to be made by chance, and I am wondering whether a newspaper cutting containing the report of criminal proceedings for assault which was sent me some time ago may not afford a clue to a problem which has puzzled all the text-book writers: What are the meaning and effect of s. 12 (6) of the Increase of Rent, etc., Restrictions Act, 1920?

The subsection runs: "Where this Act has become applicable to any dwelling-house or any mortgage thereon, it shall continue to apply thereto whether or not the dwelling-house continues to be one to which this Act applies."

One text-book, a book on the law of landlord and tenant generally which does deal with rent control, ignores the subsection. Among three of those specially devoted to the Rent Acts, I find that one is practically content to characterise it as obscure, remarking that it does not apply when the premises have become subject to a furnished tenancy (*Prout* v. *Hunter* [1924] 2 K.B. 736 (C.A.)); another says that the cases where it will operate appear to be rare, following this remark by referring to a number of decisions in which it was held not to operate; besides *Prout* v. *Hunter*, *supra*, mention is made of reconstructed premises made substantially new premises (*Phillips* v. *Barnett* [1922] 1 K.B. 222 (C.A.)), conversion by tenancy agreement into business premises (*Williams* v. *Perry* [1924] 1 K.B. 936), and business user (*Haskins* v. *Lewis* [1931] 2 K.B. 1 (C.A.)), and the reader is

referred to observations made in *Phillips* v. *Hallahan* [1925] 1 K.B. 756. The other writer tells us that the courts have been hard put to it to find any useful meaning or function for the provision, and records the following suggestions: (i) that it merely means that where premises which have been within the Acts are taken out of the Acts (e.g., by business user) they are subject to the Acts if again used for purposes within the Acts, and (ii) that where application depends on rateable value of premises let together with a dwelling-house not exceeding one-quarter of the rateable value of the house (s. 12 (2) (iii), old control only) an increase in the premises-house ratio is not to exclude the house. But he concludes by observing that the subsection has yet to receive an interpretation which is both convincing and authoritative.

However, the Scottish Land Court whose judgment I mentioned in another connection last week (96 SOL. J. 438) reminded us that "*ut res magis valeat quam pereat*" applies to statutes as well as to deeds. The statement that an Act shall apply to a house whether or not the house continues to be one to which the Act applies is on the face of it absurd; but there is, by way of corollary to the canon of construction just cited, a presumption against absurdity. True, what seems absurd to one man does not always seem absurd to another, as Lord Bramwell reminded us in *Hill* v. *East & West India Dock* (1884), 9 App. Cas. 448; but in this case there does appear to be occasion to examine the context in order to see whether words the natural meaning of which would produce anomalous results ought to be construed as they would be construed if read alone: *Colquhoun* v. *Brooks* (1889), 14 App. Cas. 493, warrants this course.

The two suggestions referred to above are, indeed, based on that principle. Section 12 is a lengthy section dealing with "application and interpretation"; it provides, by subs. (2), a double test for application, namely, by reference both to rent and rateable value (rent is, of course, immaterial for 1939 control); provisos to the same subsection exclude furnished lettings, etc.; the third subsection authorises apportionment; the next two provide for application to mortgages. And it may be said that at this stage the need for liberal interpretation already becomes manifest. For while subs. (2) says: "This Act shall apply to a house . . . let as a separate dwelling," so that if there be no letting there can be no control, subs. (4) begins with: "Subject to the provisions of this Act, the Act shall apply to every mortgage where the mortgaged property consists of or comprises one or more dwelling-houses to which this Act applies," so that one has to invoke the presumption against absurdity if one is not to exclude unlet mortgaged freeholds. And subs. (6), with which we are concerned, is followed by the provision by which "where the rent payable in respect of any tenancy of any dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that rent or tenancy [not "shall not apply to that dwelling-house"] . . . and this Act shall apply in respect of such dwelling-house as if no such tenancy existed or ever had existed." Has not the condition precedent of "let" been forgotten or suspended?

Attractive as the two suggestions sound, I think it is a valid criticism of each that the word "continue" is subjected to a greater strain than it can reasonably be expected to bear. In the cases mentioned, there would, it might plausibly be said, be an interruption—the opposite of a continuance. Admittedly, I had no alternative suggestion to put forward till I received and pondered on the cutting referred to in my first paragraph.

The subject was, as mentioned, a prosecution for assault, which at first sight would appear to have little to do with the Increase of Rent, etc., Restrictions Act, 1920, s. 12 (6). But the defendant was a landlord, the complainant his tenant. It appeared that in the course of an argument over rent the defendant had struck the complainant, damaging her glasses and hurting her eye; and before the justices, he agreed (*a*) to be bound over for twelve months and (*b*) to allow her to live in the demised premises for six months rent-free (the bench approving; also, incidentally, ordering him to pay 5s. costs).

"The arrangement was approved by the magistrates" is the way the report puts it; I do not know whether the bench fully considered and appreciated all the possible implications and possible complications, such as might result from, say, assignment (voluntary or involuntary) of reversion and term. But, treating the effect as that of a variation in the reddendum rather than the surrender of the existing term plus the grant of a new tenancy, I suggest that here, at last, is something for s. 12 (6) to do. It was pointed out in *Foster* v. *Robinson* [1951] 1 K.B. 149 that a reduction in rent, at all events a reduction in rent under a new tenancy, the new rent being less than two-thirds of the rateable value, might have the effect of depriving some guileless tenant of protection, because of s. 12 (7). It was not necessary to decide the point in that case, but it is important for present purposes to consider what exactly is enacted by subs. (7) in the event mentioned. The subsection is not just a proviso.

The consequences are two: The Act is not to apply to the *rent or tenancy* (not "the dwelling-house") and it *is* to apply in respect of the dwelling-house as if no such tenancy existed or had ever existed. My submission is, then, that during the six months of expiation, though the Act does not apply to the rent or tenancy (subs. (7)), the dwelling-house, being let, is one to which the Act applies (subs. (2)); and that the meaning and effect of subs. (6) are that, despite the interruption as regards rent or tenancy, the landlord will not be able, when the six months are over, to recover possession except on the usual grounds. And, in view of the amount of criticism that has been levelled at the draftsmen of the Acts for their short-sightedness and lack of imagination, it is pleasant to consider that they may have contemplated the possibility of some landlord losing his temper with his tenant in the course of an argument about rent, and have provided for the possible consequences in this way.

R. B.

HERE AND THERE

WHAT A SHAME!

ANDRÉ CAYETTE is at it again. Last year, you may remember, he had a go simultaneously at the jury system and at the law relating to murder for pity's sake or (as the euphemism has it) euthanasia. This year he's kicking away the foundations of capital punishment. Maître Cayette is a lawyer turned film producer (and a very good producer too) who wants to show "justice as meant in human terms," though whether the intellectual content of these "social conscience" films of his is equal to their emotional content is rather a different matter. Last year's film, "Justice est Faite" (which for some reason known only to the translator was Englished as "Let Justice be Done"), has already figured in this column. Briefly, it consisted entirely of court scenes, with scenes from the private lives of the jurors skilfully interpolated. A woman is being tried for the murder of her lover whom she has

admittedly killed. On the one hand there is evidence that she did so at his own request to save him from the protracted torture of a disease which was almost certainly incurable. On the other hand there is also evidence that she had strong financial and personal motives for killing him just at that particular moment. According to the inferences which the jury draw the verdict will be murder without or with extenuating circumstances, a death sentence on the one hand, or imprisonment on the other. "Each of the jury," says Maître Cayette, in explaining his intentions, "mistakenly attributes to the accused the motives he would have had in similar circumstances. In judging others each one of us judges himself." In which he was rather ungrateful to his creations, for they did, by a majority, find extenuating circumstances. In the final shots of the film we see the shades of the prison house closing round the lady as she is pushed unfeelingly through gate after clanging gate and the cry is obviously meant to rise (we cannot say "unbidden") to our lips, "What a shame! What a shame! What a shame!" Now what of the intellectual content of the film? Although the peeps into the private lives of the jury build up a powerful case of personal prejudice against them, this jury did in fact find the most merciful verdict the law allowed, and anyhow, so far as the evidence went, there was nothing to show which view was the right one except that the accused (in the person of that beautiful and accomplished actress Claude Nollier) was a lady of whom one would ardently *want* to believe the best. Nor is there any suggestion for a more satisfactory method of sifting evidence with fallible human instruments. As for the case for or against euthanasia (and there is a case to be made on either side) that really got no further than "What a shame! What a shame!"

MURDERERS ALL?

Now it's the turn of capital punishment, in a film being shown in Paris under the uncompromising title "We are all Murderers"—murderers (so the case goes) because when our social, moral and educational neglect have made the condemned man what he is we kill him for it. Well, no doubt there's a case to be made against those who dodge the implications of our all being members one of another, but before I myself accept personal responsibility for the actions, say, of Mr. Ley or Mr. Heath or Mr. Haigh I should like to know just what acts or omissions on my part *vis-à-vis* them are alleged against me, for, after all, there are limits (it seems to me) to what those who try to observe the law and deal fairly and justly should be asked to put up with in the interests of those who don't. Still, not to argue the case (which anyhow is argued up and down and round about in every newspaper correspondence on penal methods), this seems to be another of those dual-purpose films—social responsibility for crime *and* the "cons" against capital punishment. The producer has himself attended five executions; the police and the prison authorities have given every facility and co-operation. So one is assured of perfect factual authenticity. (Authenticity, by the way, was the outstanding feature in the court scenes of "Justice est Faite.") But within the framework of that authenticity, from the long nerve-breaking wait in the condemned cell to the agonising progress to the guillotine, there is infinite scope for emotional appeal. Yet to make the story complete, to hold the scales even, the crime should be shown in no less authentic and ruthless detail—Haigh's, shall we say, for instance? If you must invoke emotion on the one side, you cannot deny it on the other. Incidentally, there was far more to be said for the old public execution than is commonly remembered (apart from Dr. Johnson's observation that the public was gratified by the procession to Tyburn and the criminal was supported by it). It emphasised quite unmistakably that the act of the law was the act of the community and the responsibility of the community and of those who comprise it in a sense far more actual than their somewhat debatable responsibility for the individual aberrations of some of its members. Obviously capital punishment is revolting (as much is revolting in surgery or cookery or sanitary operations). Whether or not it is also a necessity in the world as it stands is a matter for reasoned judgment to the best of our knowledge, information and belief. Our feelings come, or should come, into it no more than in deciding whether or not to have a tooth out. Would Maître Cayette now care to make a pro-vegetarian film? Finally, three footnotes on matters of detail in French penal practice. There are about forty executions a year. The overcrowding in the prisons extends even to the condemned cell, which may be shared by as many as four men. The waiting period before a final decision is reached whether or not the sentence shall stand may be anything up to eighteen months.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

The Law Society's Annual General Meeting

Sir,—I have read with interest your report of the Annual General Meeting of The Law Society.

I would like to take this opportunity, however, of making one small correction to the remarks which are contained in your report as having been made by me at the meeting. I made no remarks on the question of costs, and therefore cannot claim any credit for the last two paragraphs on p. 442 of your issue. My remarks were directed entirely to the report of the Council on the recommendations that it had submitted to the Royal Commission on Marriage and Divorce, and the remarks I in fact made opened with such heading on p. 443 of your journal.

London, W.C.2. E. J. GIBBONS.

Fading Footpaths

Sir,—"Richard Roe" may like to know of one country lawyer's efforts to prevent country footpaths going out altogether.

Through a local Footpaths Preservation Society I have continually drawn the attention of the county and urban councils to these, particularly to the green lanes, which, not being motorised, are in great danger of being lost altogether, and have had some success in getting them to carry out minor repairs, such as cutting back overgrowing brambles and making trenches for letting water off. I have also carried out the survey under the Countryside Act on behalf of the R.D.C. for my district and have included in this all paths and roads for which there is local evidence as to their being public.

I suggest that any country lawyer should see his local survey of paths and bridle roads and endeavour to get any added that have been omitted (which is likely where farmers only have done the survey), and also to get the county council to admit green roads as bridle roads where possible. I find councils are ready to do this, but not to admit them as public highways without qualification. We can also explain to the more receptive of our landowning clients that it is in the interests of everyone to have some paths defined instead of many undefined and that liability for stiles will fall on the council in future.

Both the need and danger is greatest in the chalk countries, where large-scale wiring is going on, not only in Sussex but on the Purbeck Hills, where only a narrow road is being left along the ridge way, and even in the wide areas of Dorset and Wiltshire (so far not taken over by the War Office).

HENRY POTTS.

Chester.

The Covenant Scheme and New Cars

Sir,—Since readers of your journal will be directly concerned in giving advice to various clients in connection with the covenant scheme operated by the motor industry, you may deem it

advisable to bring to their notice certain modifications which have now been made in this scheme.

With effect from the 10th July, certain models of *home quota* motor cars are withdrawn from the covenant scheme and any person who now purchases one of these models will not be required to execute a deed of covenant. Any person who is in possession of one of these models for which he has executed a covenant is automatically released from his covenant and is accordingly free to deal with such vehicle as he wishes.

It is stressed, however, that *all* cars supplied from the *export quota* are still subject to covenant and may not be disposed of without the written consent of this association. This includes *all* cars supplied under the " home delivery scheme " to visitors from abroad for temporary use in the United Kingdom and subsequent export and also *all* cars supplied from the export quota for permanent retention in the United Kingdom against payment in a specified hard currency.

Any person who is in any doubt as to their position under the covenant scheme is advised to contact this association.

It is pointed out that those persons who have committed breaches of their covenants or who commit breaches in the future will not be excused, and that the association will continue to claim damages from such persons.

It is emphasised that the foregoing does not imply that there will be any increase in the allocation of new cars to the home market as this position is governed by the home and export quotas which have been laid down by the Government. It is also stressed that, in spite of the fact that certain models have been withdrawn from the covenant scheme, some 85 per cent. of the total home market allocation of new cars remain subject to the scheme.

R. D. HARINGTON,
THE BRITISH MOTOR TRADE ASSOCIATION.

London, W.1.

Solicitors' Managing Clerks

Sir,—Your journal should receive a high measure of praise from the " unadmitted " profession of managing clerks for publishing the letter from " Solmancle " in your issue of 28th June.

At the recent annual conference of the Solicitors' Managing Clerks' Association at Bournemouth, vital questions were raised concerning the status of managing clerks, the urgent need for their recognition and the grading of salaries. As one who has seen many changes in working conditions during nearly forty years' pre-occupation with the law, I am more than ever conscious that The Law Society, in the interests of the profession, should direct their attention as an urgent matter to the formulation of a scheme to " bridge the gap " between the admitted solicitor and the unadmitted, but qualified, managing clerk. Is it not time that consideration be given to the question of enabling experienced and competent managing clerks with a minimum period of continuous service to be styled, say, "Associate Solicitors" or some better designation than "clerk"? Even the shorthand-typist is styled " Secretary." Similar opportunities should be given to managing clerks as were enacted in the Justices of the Peace Act and dispensation from the Preliminary Examination and exemption from articles should be an essential feature for men of approved service and ability.

In 1926 I sat for and passed part of the Preliminary Examination (the part that really mattered).

In a period of twenty-five years I have made four applications to The Law Society for exemption under s. 11 of the Solicitors Act, 1877, and s. 29 of the Solicitors Act, 1932, with negative result, no reason being assigned for refusal, although the applications were supported with unimpeachable references as to educational standard. Is it not time that the Solicitors' Managing Clerks' Association faced up to their responsibilities to their members and to managing clerks in general? In fairness to this association, which is not yet fully representative of managing clerks in London and the provinces, it can be said that they have no " closed shop " and will not countenance any question of " trade union " activities. For this very reason it would be a good move on the part of The Law Society to take some definitive action, in concert with the associations (if need be), to improve and recognise by statutory definitions the status of managing clerks, and thereby encourage the recruitment of unadmitted clerks to the profession.

Bromley, Kent. SEMPER FIDELIS

The Horse as an Animal

Sir,—Referring to your current topic of the 5th July, it would appear that the attention of the London magistrate in the case to which you refer was not directed to art. 18 of the Glanders or Farcy Order of 1938, by which the definition of " animals " was extended to comprise horses, asses and mules, and it would appear that this extension was for the purposes of the Diseases of Animals Acts generally and not solely for the purposes of the order. In fact, as you will know, the Minister has now made a new definition order (S.I. 1952 No. 1236) which revokes art. 18 of the 1938 Order, but I gather that this is not because of any doubts as to the validity of the extension in 1938 but merely to lift the definition out of its former obscurity.

JOHN KELLY.

Huntingdon.

The Law Society Yacht Club Emblem

Sir,—As one of those responsible for the choice of a golden shark upon the burgee of the club, I would inform your correspondent [28th June issue] that the committee took the view that an emblem such as an owl, which might be taken to represent that pomposity and lack of humour which is sometimes attributed to ourselves and some of our professional colleagues, might give offence as striking too close to the truth.

The choice of the shark which, we felt, no one would take very seriously was appropriate, since no lawyer who cannot join in a laugh against himself is likely to make a good yachtsman. It had not, I fear, occurred to us that as a profession we had any enemies, but if, as your correspondent suggests, we were wrong about this and our choice has given them an opportunity for a chuckle we would wish them good luck. We are glad to be able to inform you, sir, that many friends have joined us in a chuckle.

London, E.C.4. P. R. KIMBER.

Geography for the Practitioner

Sir,—The tone of the third " small " advertisement in your issue of the 21st June [p. xvi] is so refreshing and novel that it deserves immortality. " Why not a branch in Bournemouth ? " it asks, " more conveyancing per head than any town in Great Britain." Is this the new era in which X will tell us that it has more substantial probates than any other town, and will Y proudly proclaim its predominance in drunks in charge, so that the profession will know just how each town ranks from the conveyancing, the probate and even the criminal point of view ? Can we ask for a new guide in which will be clearly collated these facts, so important—nay even essential—to the would-be practitioner ? And will the classification, I wonder, be by asterisk, as in Baedeker, or with the goblet and cutlery of Mr. Bibendum ? Truly it is most important that these vital statistics should be studied before an office is opened, so that no " five-star " town is overlooked, for, alas, all changes, and the " Mitcham Golden Mile " of my youth, with its crop of 200 speed summonses a week, has passed away and no longer glows as a great and generous guinea-giver to our profession.

In his autobiography Sir Patrick Hastings recalls the sad comments of Mr. Gill's clerk on the effect which the installation of a single electric lamp had on his master's bag of park cases, and this very year a solicitor assured me that a certain lavatory in an eastern suburb was worth more than £100 every year to him in fees at police court and sessions. How is the novice to appreciate such distinctions ? He may well elect for the electric light and leave lonely the lucrative lavatory, and with it damn his hopes of a prompt prosperous practice. But with a new guide on the lines above indicated such mistakes will not arise, so may we hope we shall soon see it published ?

Croydon. A. RAWLENCE.

Mr. J. H. Barrington, solicitor, of Burnham-on-Sea and Bridgwater, left £27,048 (£22,023 net).

Mr. E. P. Beale, solicitor, of Birmingham, left £78,445 (£77,484 net).

Mr. C. E. Staddon, O.B.E., Town Clerk of Beckenham, left £17,537 (£17,109 net).

Mr. W. H. Stratton, solicitor, of Chatham, left £33,648 (£29,394 net).

NOTES OF CASES

CHANCERY DIVISION

DONATIO MORTIS CAUSA: CONDITIONAL ON DEATH: DELIVERY: KEYS OF TRUNK AND SAFE DEPOSITS

***In re* Lillingston; Pembery *v.* Pembery**

Wynn Parry, J. 26th May, 1952

Adjourned summons.

The donor, Mrs. X, who was 78 years old and in failing health, told the donee that she was very near her end, gave her instructions relating to the burial, and said: "I am going to give you all my jewellery. I am giving you my key to the safe deposit at Harrods, and when I am gone you can go and get the jewellery." She then handed the donee the keys of her trunk and told her that the key to the safe deposit at Harrods was hidden in a glove in the trunk, and also gave her a packet of jewellery which she took from under her pillow. The donor died six days later. Further parts of the jewellery were stored in the trunk, in the Harrods safe deposit, and in a safe in the City.

WYNN PARRY, J., said that one of the elements of a valid *donatio mortis causa* was that the gift should be conditional, i.e., on the terms that, if the donor should not die, he should be entitled to resume complete dominion of the property the subject-matter of the gift. It was contended that that condition was not present in this case, but he (the learned judge) found, on the evidence, that the condition was fulfilled. The words used by the donor were words of gift, but words which imported the condition that if she were to survive she would expect to resume complete dominion. In the present case, unlike *Lord Advocate* v. *M'Court* (1893), 20 R. (Sess.) 488, the evidence did not lead to the conclusion that it was certain that death would overtake the donor within a matter of days though eventually it did. With respect to the question of delivery, there was sufficient delivery of the jewellery in the packet taken from under the pillow and of the jewellery in the trunk, the key of which was handed to the donee. More difficult was the position with respect to the jewellery in the safe deposit at Harrods (the key to which was hidden in the trunk), and the jewellery in the City safe (the key to which was in the safe deposit at Harrods). So far as the jewellery in the Harrods safe deposit was concerned, on the authority of *Re Wasserberg* [1915] 1 Ch. 195, it could be said that delivery of the key to that safe deposit was a sufficient delivery of the jewellery. As regards the jewellery in the safe deposit in the City, there was no direct authority on the point, but in his (the learned judge's) view, it did not matter in how many boxes the subject of a gift may be contained or that each, except the last, contained the key which opened the next, so long as the scope of the gift was made clear. The jewellery in issue was, therefore, the subject of a valid *donatio mortis causa*.

APPEARANCES: *J. A. Brightman; Raymond Jennings*, Q.C., and *F. B. Marsh* (*F. Shirley Turner & Harrison*); *Milner Holland*, Q.C., and *J. A. Wolfe* (*Speechly, Mumford & Craig*, for *Lamport, Bassitt & Hiscock*, Southampton).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

MAINTENANCE OF TOMB: CONDITION ATTACHED TO GIFT VOID: GIFT OVER VALID

***In re* Martin; Barclay's Bank, Ltd. *v.* Board of Governors of St. Bartholomew's Hospital and Others**

Harman, J. 11th June, 1952

Adjourned summons.

The testatrix directed her executors to pay half the residue of her estate to the Royal Air Force Benevolent Fund, and the other half to St. Bartholomew's Hospital, London, upon trust to use the income for the maintenance of certain gravestones at a London cemetery, and "if at any time the said gravestones . . . be not in good order and repair . . . then such other half share of my residuary estate" should likewise be transferred to the Royal Air Force Benevolent Fund.

HARMAN, J., said that the main question was whether the testatrix could impose the condition on the gift to repair the tombs. A gift for the upkeep of a tomb for ever was bad as creating a perpetuity. On the other hand, a gift to a body, whether charitable or not, for so long as they kept a tomb in repair was valid if, when they failed to do so, the gift went over to another body (*In re Chardon* [1928] Ch. 464). Cohen, J., found in *In re Dalziel* [1943] Ch. 277 that the gift was a bequest to trustees on trust to apply a part, or if necessary the whole, of the gift in the maintenance of the tomb, and held that the gift was bad because the gift over made it necessary to say that it was not a mere moral obligation, and the gift over was likewise saddled with a condition. That was not the position here. The gift over was not saddled with any condition; the gift over was a valid gift from one charity to another on the failure of some event. Following *Fisk* v. *A.-G.* (1867), L.R. 4 Eq. 521, the gift in issue had to be construed as a gift of the income of the fund to St. Bartholomew's Hospital free from the obligation to repair the tombs (which was a bad condition), but subject to a valid gift over should the gravestones fall into disrepair. If it seemed odd that a condition which was bad when applied to the gift of income in the first place might come in by way of gift over in the second, that was the kind of subtlety which existed in this branch of the law.

APPEARANCES: *M. W. Cockle* (*H. B. Wedlake, Saint & Co.*); *L. J. Morris Smith* (*Wilde, Sapte & Co.*); *J. A Wolfe* (*Charles Russell & Co.*); *B. G. Burnett-Hall* (*Gedge, Fiske & Co.*); *D. B. Buckley* (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

CHARITY: ACCUMULATION OF SURPLUS: SUPPORT OF WESLEYAN METHODIST MINISTER

***In re* Bradwell; Goode *v.* Board of Trustees for Methodist Church Purposes**

Roxburgh, J. 19th June, 1952

Adjourned summons.

A testator directed his executors to hold his house on trust to permit it to be used as a cottage hospital or convalescent home, and to appropriate any surplus income to a fund, the income of which should be applied towards the maintenance and support of a resident Wesleyan Methodist minister. The house was occupied by a statutory tenant, and the trust was not immediately practicable. Roxburgh, J., had already decided that, although the house could never be used as a cottage hospital, there were other charitable purposes for which it could be used, and that part of the bequest constituted a valid and effectual charitable trust. The question then arose whether the trusts for the support of a Wesleyan Methodist minister were void as infringing the Accumulation Act, 1800, and the Law of Property Act, 1925, s. 164.

ROXBURGH, J., said that in the present case there was a direction to accumulate which plainly violated the Law of Property Act, 1925, s. 164, because more than twenty-one years had already expired when the prior interests determined. But for the authorities, he would have thought the statute imperative, and as there was no gift to the Methodists independent of the trust for accumulation, there might be a great deal to be said for the view that the direction brought about a trust for the next of kin and the heir at law. But the principle applicable to the present case was laid down in *Martin* v. *Margham* (1844), 14 Sim. 230, a case which appeared to have been more than approved by the Court of Appeal in *In re Monk* [1927] 2 Ch. 197, 208, 215. Following that case, he (the learned judge) would declare that the testator's residuary estate was held on valid and effectual charitable trusts to the exclusion of the next of kin and heir at law, and a scheme would be directed.

APPEARANCES: *Wilfrid Hunt; Allan Heyman* and *John Monckton* (*Jaques & Co.* for *William Irons & Son*, Sheffield); *N. S. S. Warren* (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

LEGITIMATION: COMMON LAW AND LEGITIMACY ACT, 1926: WILL COMING INTO OPERATION BEFORE DATE OF MARRIAGE

***In re* Hurll; Angelini *v.* Dick**

Harman, J. 20th June, 1952

Adjourned summons.

The plaintiff's mother, when interned in Italy, formed an association with X, an Italian, and gave birth to the plaintiff in 1943. In 1949, X and the plaintiff's mother were married in London but their marriage was later annulled. X was at all material times domiciled in Italy and, before his marriage in 1949, a bachelor. The question arose whether the plaintiff was the legitimate child of his mother and as such entitled to take under the will of

the mother's father, and to be the object of the statutory power of advancement applicable to her share under the father's will. The will was made in 1934 and the father died in 1939.

The Legitimacy Act, 1926, provides in s. 3 (*b*) that a legitimated person shall be entitled to take any interest under any disposition "coming into operation *after* the date of legitimation," and in s. 8 (1) that legitimation by subsequent marriage—irrespective of the *lex domicilii* of the father of the child at the date of its birth—shall operate, in the circumstances of the present case, "from the date of marriage."

HARMAN, J., said that it was admitted that if the Legitimacy Act, 1926, had never been passed, the plaintiff would have been entitled to be considered as the legitimate son of his parents; he would be entitled to the benefits under the will and to be treated as the object of the power of advancement; his father was domiciled, both at the date of birth of the plaintiff and at the date of the marriage, in a country where legitimation by subsequent marriage was recognised. *Prima facie* the Act of 1926 would have to be regarded as conferring legitimacy on persons who were not legitimate before. The class of people affected by s. 8 (1) must be drawn from a consideration of the section as a whole. One of the qualifications was that the father of the child was not at its birth domiciled in a country which recognised legitimation by subsequent marriage. That being so it left the plaintiff out, and the contention that he was not an object of the power because the will came into operation *before* the date of his legitimation failed. The infant plaintiff was legitimated by the subsequent marriage of his parents, but not by reason of the Legitimacy Act, 1926, and could be an object of the power of advancement.

APPEARANCES: *Geoffrey Cross*, Q.C., and *Claud Allen* (*Cardew-Smith & Ross*); *Bowyer; Pennycuick*, Q.C., and *W. F. Waite; H. A. Rose* (*Piesse & Sons*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

QUEEN'S BENCH DIVISION

FRAUDULENT SALE BY BAILEE: TITLE TO CHATTEL SOLD

Jerome *v.* Bentley & Co.

Ormerod, J. 23rd May, 1952

Action.

On 30th December, 1946, the plaintiff, the owner of a diamond ring, entrusted the ring to one T upon the terms that T should endeavour to sell the ring, keeping for himself any money received for it in excess of £550, and should return the ring to the plaintiff, if unsold, at the end of seven days. On 11th January, 1947, T sold the ring to the defendants, who bought it in good faith, and later re-sold it. On 9th May, 1947, T pleaded guilty to a charge of larceny as a bailee. The plaintiff brought an action against the defendants for conversion.

ORMEROD, J., said that the plaintiff's case was that T, on keeping the ring and converting it to his own use after the authorised seven days, committed larceny, and so could pass no title. The defendants' case was that T was an agent who had exceeded his authority by keeping the ring more than seven days, and that a principal could not successfully rely on the limitation of his agent's authority unless that limitation was notified to the third parties concerned. T, however, was not an agent at all; on the date of the sale to the defendants, his sole duty was to hand the ring back to the plaintiff. *Lickbarrow* v. *Mason* (1787), 2 Term Rep. 63, had been relied on, but that case meant that one innocent party who misled another was liable. Here the plaintiff did nothing to mislead the defendants, who knew nothing of him or of any supposed agency. Accordingly, no property in the ring passed to the defendants, and the plaintiff was not precluded from setting up his title. Judgment for the plaintiff.

APPEARANCES: *J. Di V. Nahum* (*Pollard, Stallabrass & George Martin*, for *Douglas Clift*, Lancaster); *B. B. Stenham* (*C. Butcher & Simon Burns*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

BUILDING REGULATIONS: DISMANTLING SCAFFOLDING

Sexton *v.* Scaffolding (Great Britain), Ltd.

Donovan, J. 13th June, 1952.

Action.

The plaintiff, a scaffolder, fell to the ground and was injured while engaged in dismantling scaffolding erected against the wall of a building. The plaintiff was working more than 6 ft. 6 in. from the ground, and the guard rail had been removed. He sued his employers for breach of statutory duty, and for negligence. The Building (Safety, Health and Welfare) Regulations, 1948, provide by reg. 2 (1): "These regulations shall apply to . . . the construction, structural alteration, repair or maintenance of a building . . . the demolition of a building . . . and to machinery or plant used in such operations"; by reg. 4: ". . . it shall be the duty of . . . every employer of workmen who erects or alters any scaffold to comply with such of the requirements of regs. 5–30 as relate to the erection or alteration of scaffolds . . ."; by reg. 24 (1): ". . . every side of a working platform . . . being a side thereof from which a person is liable to fall more than 6 ft. 6 in. shall be provided with a suitable guard-rail . . ."; by reg. 97: "If the special nature or circumstances of any part of the work render impracticable compliance with the provisions of these regulations designed to prevent the fall of any persons engaged on that part of the work, then those provisions shall be complied with so far as practicable."

DONOVAN, J., said that reg. 2 applied to the operation, as the erection and dismantling of scaffolding was part of the operations covered by the regulation, and scaffolding was "plant." Further, if scaffolding were not within the regulations, regs. 5–30 would be meaningless. Regulation 24 (1) applied and the employers were in breach, as the dismantling had not reached such a stage as to render necessary the removal of the guard rail; if it had, the employers would have been protected by reg. 97. The employers were also guilty at common law of negligence in removing the guard rail prematurely and exposing the plaintiff to an unnecessary danger; it made no difference that it was common practice to remove it at that stage. Under the circumstances of the case, the plaintiff was guilty of contributory negligence, and was to blame to the extent of one-third. Judgment for the plaintiff.

APPEARANCES: *H. T. Buckle* (*Berry Tompkins & Co.*); *S. Chapman* (*L. Bingham & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

PRACTICE NOTE: COMMITTAL TO QUARTER SESSIONS FOR SENTENCE

Lord Goddard, C.J., Slade and Parker, JJ.

16th June, 1952

At the hearing of an application for leave to appeal against a sentence of Borstal training, SLADE, J., delivering the judgment of the court, said that the only power which quarter sessions had with regard to a prisoner committed to them under s. 20 of the Criminal Justice Act, 1948, was to sentence him to Borstal training; or, if that was considered unsuitable, to award such a sentence as the justices could have awarded. In the case of a single offence, such a sentence was limited to six months imprisonment, a sentence which might be quite inadequate in some cases. Under s. 29, however, there was no such limitation on the power of quarter sessions to award sentence. Accordingly, when justices were considering the question of committing an offender to quarter sessions under s. 20 with a view to a Borstal sentence, they should take into consideration whether it would not be better to commit him under s. 29, particularly if he was approaching the age of twenty-one.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

Mr. E. C. LEWIS has been appointed an assistant registrar of county courts attached to the Birmingham County Court.

Mr. H. M. PINNEY, deputy Coroner of the Metropolitan District of Essex since 1939, has been appointed Coroner in succession to Dr. P. B. Skeels, who died last January.

Mr. G. M. PORTER, assistant solicitor to Crewe Corporation since 1945, has been appointed deputy Town Clerk of Workington in succession to Mr. K. B. Edwards, who resigned earlier this year.

Mr. E. K. WATERHOUSE, F.C.I.I., solicitor, formerly a barrister, has been appointed assistant secretary to the National Coal Board, West Midlands Division.

The following appointments are announced in the Colonial Legal Service: Mr. A. R. F. DICKSON, Magistrate, British Guiana, to be Magistrate, Nigeria; Mr. D. B. W. GOOD, Legal Draftsman, Sierra Leone, to be Legal Draftsman, Malaya; Mr. G. E. HILL to be Resident Magistrate, Tanganyika; and Mr. R. KNOX MAWER, B.A., to be Chief Magistrate and Registrar, Aden.

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 9th July :—

Agriculture (Ploughing Grants)
Finance
Leamington Corporation.
Manchester Ship Canal.
Merchant Navy Memorial.
Pier and Harbour Order (Falmouth) Confirmation.
Post Office (Amendment)
Post Office and Telegraph (Money)
Winchester Corporation.

HOUSE OF LORDS

A. Progress of Bills

Read First Time :—

Housing Bill [H.C.] [9th July.
Rating and Valuation (Scotland) Bill [H.C.] [7th July.
Rochester Corporation Bill [H.C.] [7th July.

Read Second Time :—

Agricultural Land (Removal of Surface Soil) Bill [H.L.] [10th July.
Brighton Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [8th July.
Crown Lessees (Protection of Sub-tenants) Bill [H.C.] [10th July.
Derby Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [8th July.
Disposal of Uncollected Goods Bill [H.C.] [10th July.
Essex County Council Bill [H.C.] [7th July.
Hypnotism Bill [H.C.] [10th July.
Lancaster Palatine Court (No. 2) Bill [H.C.] [10th July.
North Wales Hydro-Electric Power Bill [H.C.] [7th July.
Pier and Harbour Provisional Order (Brighton) Bill [H.C.] [9th July.
Pier and Harbour Provisional Order (Great Yarmouth) Bill [H.C.] [9th July.
Pier and Harbour Provisional Order (Herne Bay) Bill [H.C.] [10th July.
Pier and Harbour Provisional Order (King's Lynn) Bill [H.C.] [10th July.
Pier and Harbour Provisional Order (Minehead) Bill [H.C.] [10th July.
Pier and Harbour Provisional Order (Seaham Harbour) Bill [H.C.] [9th July.
Portsmouth Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [8th July.
Prisons (Scotland) Bill [H.L.] [10th July.
To consolidate certain enactments relating to prisons and other institutions for offenders in Scotland and related matters, with such corrections and improvements as may be authorised under the Consolidation of Enactments (Procedure) Act, 1949.

Read Third Time :—

Llanelly District Traction Bill [H.L.] [7th July.

B. Debates

On the second reading of the **Lancaster Palatine Court (No. 2) Bill,** Lord Mancroft said that at present it was not possible to transfer matters of a Chancery nature from the High Court to the Lancaster Palatine Court. Recently the Assize Courts in Manchester and Liverpool had become heavily congested and many of the matters down for hearing therein could well have been heard in the Palatine Court. The Bill gave the necessary power. Neither divorce, nor criminal, nor common-law matters would be transferable, nor would the appellate jurisdiction of the Chancery Division be transferable. The opportunities for conference between the judges, and for access to fuller sets of reports, made it preferable that this jurisdiction be kept in the High Court. There was one difficulty—at present legal aid was not available in the Lancaster Palatine Court, and some embarrassment might be caused if an assisted case in the High Court were transferred. The Bill had the approval of the local law societies and also of the Bar Council.

The Lord Chancellor said he approved of the Bill. Without pledging himself in any way, he thought it would be possible to do something about the question of legal aid and he would look further into the matter. [10th July.

C. Questions

Town and Country Planning Act Claims

Viscount Gage asked what proportion of the S. 1 claims submitted under the Town and Country Planning Act, 1947, and now estimated to total between £345 and £350 millions, related to the potential redevelopment of existing buildings.

Viscount Swinton said that for the purposes of the scheme to be made under s. 58 of the Town and Country Planning Act, 1947, development values had to be ascertained in accordance with s. 61 of that Act, which broadly defined them as the difference between the restricted and unrestricted values of the interests in land in respect of which claims are made. The restricted value of an interest included any value that it might have for development of any class described in the Third Schedule of the Act—in the case of existing buildings this included their extension by not more than 10 per cent. of their cubic capacity or their rebuilding within a limit not exceeding their original cubic capacity by more than 10 per cent. The unrestricted value was the value which the interest would have had for any kind of development if the Act had not been passed. He regretted, therefore, that the information for which the noble Lord asked was not available, but from what he had said about the Third Schedule of the Act it would be seen that a considerable part of the value for redevelopment of existing buildings had to be included in the restricted value and, therefore, excluded from the development value of the claims on the £300 million. [9th July.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

British Museum (Amendment) Bill [H.C.] [9th July.
To amend the system of appointment of trustees to the British Museum, and to confer on the new trustees fresh powers allowing them to lend, or to dispose of objects vested in them, subject to parliamentary approval.

Civil List Bill [H.C.] [10th July.
To make provision for the honour and dignity of the Crown and the Royal Family, and for the payment of certain salaries, allowances and pensions; to enable Her Majesty to assent to arrangements on behalf of any son of Her Majesty being Duke of Cornwall; for the payment of certain sums out of the revenues of the Duchy during the minority of the said Duke; and for purposes connected with the matters aforesaid.

Transport Bill [H.C.] [8th July.
To require the British Transport Commission to dispose of the property held by them for the purposes of the part of their undertaking which is carried on through the Road Haulage Executive; to amend the law relating to the carriage of goods by road and to provide for a levy, for the benefit of the said Commission and for other purposes, on motor vehicles used on roads; to provide for the reorganisation of the railways operated by the said Commission and to amend the law relating to the powers, duties and composition of the said Commission; to repeal certain provisions of the Transport Act, 1947, and to amend other provisions thereof; to amend section six of the Cheap Trains Act, 1883; and for purposes connected with the matters aforesaid.

Read Second Time :—

Kingston upon Hull Corporation Bill [H.L.] [10th July.

Read Third Time :—

Canterbury and District Water Bill [H.L.] [11th July.
Governesses Benevolent Institution Bill [H.L.] [10th July.
Kilmarnock Corporation Order Confirmation Bill [H.C.] [11th July.
To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to Kilmarnock Corporation.
Leith Harbour and Docks Order Confirmation Bill [H.C.] [11th July.
To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to Leith Harbour and Docks.
Motor Vehicles (International Circulation) Bill [H.L.] [9th July.

B. QUESTIONS

REQUISITIONED PROPERTY (RENTS)

Asked by Brigadier MEDLICOTT whether he was aware of the hardship caused to owners of private property under requisition by local authorities by the low rental paid by such authorities, and whether he would take steps to ensure that as long as such requisitioning continued the rental paid should bear relation to the market value of the property and to the value which the house would have to the owner if he were permitted to occupy it, Mr. HAROLD MACMILLAN said that the rental compensation was assessed in accordance with the provisions of ss. 7 and 8 of the Requisitioned Land and War Works Act, 1948, and he had no power to increase it. [8th July.

STATUTORY INSTRUMENTS

Adoption of Children (County Court) Rules, 1952 (S.I. 1952 No. 1258 (L. 7).) 11d.

These rules replace similar rules made in 1949. Among the innovations made are the enabling of a county court to entertain a second application by the same applicant in respect of the same infant, although there has been no substantial change of circumstances, provided that the case was not dismissed on its merits at the previous hearing. And see p. 453, *ante*.

Agriculture (Field Drainage and Water Supplies) Continuation of Grants Order, 1952. (S.I. 1952 No. 1282.)

Fertilisers (England, Wales and Scotland) Scheme, 1952. (S.I. 1952 No. 1273.) 5d.

Fertilisers (Northern Ireland) Scheme, 1952. (S.I. 1952 No. 1274.) 5d.

Food Standards (Ice-Cream) (Amendment) Order, 1952. (S.I. 1952 No. 1283.)

Horses (Sea Transport) Order, 1952. (S.I. 1952 No. 1291.) 8d.

Import Duties (Drawback) (No. 7) Order, 1952. (S.I. 1952 No. 1285.)

Kitchen Waste (Amendment) Order, 1952. (S.I. 1952 No.1286.)

Lincoln Corporation Water (Extension of Powers) Order, 1952. (S.I. 1952 No. 1262.)

London Traffic (Prescribed Routes) (No. 14) Regulations, 1952. (S.I. 1952 No. 1293.)

London Traffic (Restriction of Waiting) (Station Parade, Gerrards Cross) Regulations, 1952. (S.I. 1952 No. 1294.)

National Health Service (Travelling Allowances, etc.) (Scotland) Regulations, 1952. (S.I. 1952 No. 1297 (S. 62).) 6d.

National Insurance (Hospital In-Patients) Amendment Provisional Regulations, 1952. (S I. 1952 No. 1290.) 5d.

Draft National Insurance (Seasonal Workers) Amendment Regulations, 1952. 5d.

Newcastle and Gateshead Water Order, 1952. (S.I. 1952 No. 1284.) 5d.

Stopping up of Highways (Berkshire) (No. 2) Order, 1952. (S.I. 1952 No. 1277.)

Stopping up of Highways (Dumfries-shire) (No. 1) Order, 1952. (S.I. 1952 No. 1276.)

Stopping up of Highways (Leicestershire) (No. 2) Order, 1952. (S.I. 1952 No. 1278.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d. post free.]

BOOKS RECEIVED

Directors' Remuneration for Tax Purposes (including E.P.L.). By PHILIP FISHER, F.C.A. 1952. pp. (with Index) 176. London: Clarity Publications, Ltd., 63A Great Russell Street, W.C.1. 21s. 6d. post free.

Wurtzburg's Law relating to Building Societies. Tenth Edition. By JOHN MILLS, O.B.E., B.A., of the Middle Temple and Lincoln's Inn, Barrister-at-Law, assisted by BRYAN J. H. CLAUSON, M.A., of Lincoln's Inn, Barrister-at-Law. 1952. pp. xxxv and (with Index) 406. London: Stevens & Sons, Ltd. £2 2s. net.

The Law List, 1952. Edited by LESLIE C. E. TURNER. 1952. pp. xxiv and (with Index) 1,901. Published by the authority of The Law Society. London: Stevens & Sons, Ltd. 25s. net.

Kime's International Law Directory for 1952. Edited and compiled by PHILIP W. T. KIME. 1952. pp. xiv and 504. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

Whillans's Tax Tables and Tax Reckoner, 1952-53. By GEORGE WHILLANS, Fellow of the Institute of Bankers, Fellow of the Institute of Taxation, Fellow of the Royal Economic Society. 1952. pp. 12. London: Butterworth & Co. (Publishers), Ltd. 5s. net.

Oyez Practice Notes, No. 9: Proving a Will. By the late EDGAR A. PHILLIPS, O.B.E., LL.B. Second Edition by D. R. LE B. HOLLOWAY, LL.B. (Hons.), of the Principal Probate Registry. 1952. pp. (with Index) 110. London: The Solicitors' Law Stationery Society, Ltd. 9s. 6d. net.

Coulson and Forbes on the Law of Waters and Land Drainage. Sixth Edition. By S. REGINALD HOBDAY, O.B.E., of Gray's Inn, Barrister-at-Law. 1952. pp. lx and (with Index) 1,320. London: Sweet & Maxwell, Ltd. £8 8s. net.

Case Law on National Insurance and Industrial Injuries. By HORACE KEAST, D.P.A., Establishment Officer, Cornwall County Council. 1952. pp. xvi, 194 and (Indices) xi. Hadleigh: The Thames Bank Publishing Co., Ltd. 10s. net.

The Shops Act, 1950, and the Factories Act, 1937, as affecting Local Authorities. Second Edition. By ALAN L. STEVENSON, B.A., of the Inner Temple, Barrister-at-Law. 1952. pp. lxiii and (with Index) 341. London: Hadden, Best & Co., Ltd. 25s. net.

The Law of Burial and Generally of the Disposal of the Dead. Second Edition. By ALFRED FELLOWS, B.A. (Cantab.), of Lincoln's Inn, Barrister-at-Law. 1952. pp. xliii and (with Index) 603. London: Hadden, Best & Co., Ltd. £2 15s. net.

Spicer and Pegler's Practical Bookkeeping and Commercial Knowledge. Ninth Edition. By W. W. BIGG, F.C.A., F.S.A.A., H. A. R. J. WILSON, F.C.A., F.S.A.A., and A. E. LANGTON, LL.B. (London), F.C.A., F.S.A.A. 1952. pp. xiv and (with Index) 450. London: H. F. L. (Publishers), Ltd. 21s. net.

The "Oyez" Table of Legal Costs on a Sale of Land. Third Impression. July, 1952. London: The Solicitors' Law Stationery Society, Ltd. 2s. 6d. net.

The "Oyez" Table of *Ad Valorem* Stamp Duties. Sixth Impression. July, 1952. London: The Solicitors' Law Stationery Society, Ltd. 2s. net.

REVIEWS

The Conveyancer's Year Book, 1951. (Vol. 12.) By J. A. GIBSON, of Lincoln's Inn, Barrister-at-Law, assisted by C. N. BEATTIE and J. P. WIDGERY, of Lincoln's Inn, Barristers-at-Law. 1952. London: The Solicitors' Law Stationery Society, Ltd. £2 2s. net.

This review is in the nature of an epitaph since the publishers have announced that the present volume will be the last of the series. The burden of editing an annual volume of this kind is one to tax the energies of any lawyer and, rather than lower the exceedingly high standard set by the present editor and his predecessors, the publishers have decided to discontinue publication. Subscribers to previous volumes will need no recommendation to complete their sets and, whether the earlier Year Books are possessed or not, the present volume will form a valuable addition to any office library. The different subjects are set out under alphabetically arranged headings dealing with such matters as Agriculture, Appointments, Death Duties, Defence Regulations Highways, Landlord and Tenant, Mortgages, Settlements, Vendor and Purchaser, Wills and Intestacy and many others.

Each article is more than a mere summary of the events of the year; important decisions are thoroughly discussed, Acts of Parliament are exhaustively annotated and complete references to old authorities, standard text books and Statutory Instruments are given. The whole series has maintained a standard of editorial erudition more reminiscent of half a century ago than the bustling days of the mid-twentieth century. Yearly digests are of especial value in keeping practitioners up to date with changes in the law since the publication of the latest edition of any particular text book, yet these volumes have a more than transient value in that the year when an Act was passed or a case decided often stands out in our minds more clearly than more conventional sources of reference and the fortunate possessor of a set of "The Conveyancer's Year Books" will find in them a valuable "auxiliary memory" which will serve him faithfully for many years to come.

Local Land Charges. Second Edition. By J. F. GARNER, LL.M., Solicitor, Town Clerk of Andover. 1952. London: Shaw and Sons, Ltd. 17s. 6d. net.

The first edition of this book was very well received, and it has been found to be most valuable not only to officers of local authorities but also to solicitors engaged in conveyancing work. An adequate appreciation of the problems affecting local land charges requires a knowledge of both local government law and practice on the one hand and conveyancing practice on the other hand: the author has that knowledge to a high standard. Experience shows that many solicitors are inclined to accept the demands of local authorities without a very close examination of the statutory basis for those demands; in so far as they may be registrable it would often pay to consult this book.

The author has apparently reconsidered very carefully much of the subject-matter before preparing the present edition and as a result he has produced a well balanced account. He does not hesitate to express an opinion on doubtful points and thereby the value of the book for reference purposes is increased.

A close examination shows that there are very few matters indeed on which criticism is possible. The following three points are mentioned, as the author may wish to reconsider them for the purposes of a further edition. On pp. 21 and 24 there are references to provisional and final apportionments of private street works expenses under the Public Health Act, 1875, s. 150. It is suggested that this wording is misleading. The Private Street Works Act, 1892, provides for provisional apportionments, but under the 1875 Act there are no such apportionments. Secondly, there are appendices described as "The Local Land Charges Rules and Other Relevant Rules." These include the Town and Country Planning Acts, 1944 and 1947 (Registration of Orders and Lists of Buildings) Rules, 1948, but no later rules. It is difficult to see why other rules such as the Public Utilities Street Works Act, 1950 (Registration of Declarations) Rules, 1951, and the Housing Act, 1949 (Registration of Conditions) Rules, 1951, are not included in the appendices to this edition; they are just as important as some of the earlier rules and are mentioned in the list at p. xix. Finally, the reviewer would suggest that a discussion of the effect of *Re Forsey and Hollebone's Contract* [1927] 2 Ch. 379 should be included in another edition. The case is mentioned at p. 69, but there is little attempt to work out the consequences of the decision or to advise what steps should be taken in practice. As the book is described as "A Guide for Registrars and Private Practitioners," rather more space might be devoted to matters such as this which are of primary interest to private practitioners; at present perhaps the subject is approached a little too much from the point of view of registrars.

The Principles of Income Taxation. By J. P. HANNAN, LL.D., and A. FARNSWORTH, LL.D., Ph.D. 1952. London: Stevens & Sons, Ltd. £3 3s. net.

Based upon a work by the late Mr. J. P. Hannan originally published in Australia, this book has been adapted and revised for English practitioners by Dr. Farnsworth, who is well qualified for the task of analysing the decisions of the courts upon taxation problems which do not depend in the main upon statutory provisions and deducing the principles underlying them. The book thus differs from the majority of works on taxation, which set out to guide the reader through the complexities of sections, subsections, provisos and Schedules. The matters dealt with being for the greater part those which arise in computing the profits of a trade, the book cannot fail to be of assistance to practitioners advising upon this important branch of tax law, and it is not necessary to agree with every view expressed to find this a work of value and interest. As is to be expected from his record as a scholar and historian in the field of tax law, the author displays both erudition and independence of mind in his comments. It is surprising to find no reference at all to a case dealing with such an important question of principle as *Fry* v. *Salisbury House* [1930] A.C. 432. The citations of Commonwealth and U.S. decisions add to the interest of the book.

NOTES AND NEWS

Personal Notes

Mr. W. E. Hamlin, solicitor, of Wimbledon, has been elected chairman of the Wimbledon and District Chamber of Commerce and president of the Surrey Mayors' Association.

Miscellaneous

The Lord Chancellor has extended the service of His Honour Judge Ralph Thomas as assistant judge of the Mayor's and City of London Court for one year from 11th November, 1952.

Reporting of Property of Japanese Residents in Neutral Countries

The Board of Trade have released from the provisions of the Japanese Treaty of Peace Order, 1952 (S.I. 1952 No. 862) (see *ante*, p. 334), the property, rights and interests in the United Kingdom of individuals of Japanese nationality who from the beginning of the war with Japan up till the date of the coming into force of the Peace Treaty (that is, between 7th December, 1941, and 28th April, 1952) were continuously resident in territory which has at no time been enemy territory, other than property, rights or interests which have at any time been subject to an order made by the Board of Trade under s. 7 of the Trading with the Enemy Act, 1939. This action is given effect by a Direction to Release made by the Board of Trade on 28th June, 1952.

British Property, Rights and Interests in Japan

British owners of property in Japan are informed that provision is made in the Treaty of Peace with Japan for the return to its owners of the property of each Allied Power and its nationals which was in Japan at any time between 7th December, 1941, and 2nd September, 1945. Where property has not yet been returned, or where the owner has not yet accepted the return of his property, application for its return must be made to the Japanese Government within nine months of the date of coming into force of the Treaty, that is, before 28th January, 1953.

The Treaty also provides for compensation in respect of loss of or damage to Allied Powers' property which was within Japan on 7th December, 1941. To give effect to this provision of the Treaty, the Japanese Government have promulgated a special law, the Allied Powers Property Compensation Law. Under this law property owners must, if they have not already done so, make application, within nine months of the coming into force

of the Treaty, for the return of their property, which would entail the acceptance of any damaged property which is returnable in its present state, if they wish to make a claim for compensation for loss or damage. Claims for compensation must be lodged with the Japanese Government within eighteen months of the coming into force of the Peace Treaty, that is, before 28th October, 1953.

It has been arranged that applications for return of property and compensation claims are to be made to the Japanese Government through the Government of each Allied Power. Her Majesty's Government are, therefore, making arrangements for the presentation of applications for return and of compensation claims of British subjects.

Property which may be the subject of a claim includes movable and immovable property, bank balances or debts which have been paid into the Special Property Administration Account in the Bank of Japan, but does *not* include monetary credits or debts which have not been so paid.

British subjects in the United Kingdom who have registered interests in Japan within the description above with the Administration of Enemy Property Department (formerly the Trading with the Enemy Department) will shortly receive advice on the matter from that department.

British subjects who have *not* registered such interests in Japan with the department should apply at once for advice to the Controller-General, Administration of Enemy Property Department, Lacon House, Theobalds Road, London, W.C.1.

Restrictions on Indonesian Assets in United Kingdom Removed

Control over money and property in the United Kingdom of persons resident in Indonesia has been removed by the Trading with the Enemy (Enemy Territory Cessation) (Indonesia) Order, 1952 (S.I. 1952 No. 1246), which came into operation on 26th June.

The order removes control exercised under the Trading with the Enemy Act, 1939, and other orders, in respect of money and property which came under such control solely because the owner was resident or carrying on business in Indonesia. The order, however, does not without supplementary action affect the position of such of the money or property as has been actually paid to or vested in a Custodian of Enemy Property, or has come under the control of an Administrator of Enemy Property.

Money and bank balances payable by bankers to or for the benefit of Indonesian residents will immediately be released by the Custodians of Enemy Property to United Kingdom banks for the credit of the original account holder, except in cases where the holder or any of the joint holders has died, when further legal formalities are required.

Application for the release of other Indonesian money and property returnable to the owner should be made to the Administration of Enemy Property Department (Branch 4), Lacon House, Theobalds Road, London, W.C.1.

Money and Property Agreement between Her Majesty's Government and the Austrian Government

The Board of Trade, in a Press notice dated 30th June, refer to a money and property agreement between Her Majesty's Government and the Austrian Government, and state that:—

1. The agreement provides for the transfer of moneys held by Custodians of Enemy Property to the Austrian Federal Government who will pay the schilling equivalent to the "Austrian person" (see para. 4 below) who has been entitled thereto and for the release of property other than money held by Custodians of Enemy Property direct to the Austrian person entitled thereto.

2. The carrying out of the agreement is subject to the provisions of the United Kingdom revenue or foreign exchange legislation.

3. No individual application is necessary as regards moneys which will be transferred in due course to the Austrian Federal Government under the above arrangement. Where property other than moneys is concerned, the Austrian person entitled will be required to complete a form of application which may be obtained from the Austrian National Bank.

4. It will be noted that these arrangements apply only to "Austrian persons" who are defined as persons (natural or juridical) who at the coming into force of the agreement possess Austrian nationality and are resident or carry on business in Austria and whose money or property in the United Kingdom came under control *solely* because they are or have been resident or carrying on business in Austria.

5. Application may also be made by Austrian nationals resident outside Austria on the date of the agreement for the return of their money or property under control. Such application should be made on a form to be obtained from the Board of Trade, Administration of Enemy Property Department, Branch 4, Lacon House, Theobalds Road, London, W.C.1.

6. In a note which supplements the agreement and is published therewith, the Austrian Government announce their intention of facilitating the settlement of pre-war sterling debts due to "persons in the United Kingdom" (a term which is to be understood as meaning "persons resident or carrying on business in the United Kingdom on or before 3rd September, 1939"), and of making sterling available for transfer for that purpose on an equitable basis to an amount at least equal to that passing to the Austrian Government under the agreement. In the agreement itself the Austrian Government undertake to assist "United Kingdom persons" (see para. 8 below) to trace the Austrian persons who are their debtors, to facilitate payment and transfer and to consider action for the removal of legal obstacles arising from the state of war which may prevent an equitable settlement of outstanding indebtedness.

7. The agreement further provides that the Austrian Government will, subject to the provisions of Austrian legislation, facilitate the restitution of such rights and interests in Austria, and of such money and property (as it now exists) in Austria as are still unrestored and belong to "United Kingdom persons" (see para. 8 below). The Austrian Government also undertakes, subject to Austrian foreign exchange legislation, to accord to United Kingdom persons such treatment as is accorded to Austrian persons as respects loss of or prejudice to money or property in Austria by reason of the state of war or of the German occupation of Austria.

8. It should be noted that the agreement applies only to "United Kingdom persons" who are defined as persons (natural or juridical) whose money or property have been subject in Austria to special measures *solely* because they were resident or carrying on business in the United Kingdom.

9. United Kingdom persons as defined above who think they may have claims for the restitution of money and property in Austria should write direct to the Legal Department, British Embassy, Vienna.

10. Persons in the United Kingdom (see para. 6) who had pre-war sterling debts due to them and think they may have claims under the supplementary note should communicate their claims to the Austrian Embassy, 18 Belgrave Square, London, S.W.1, using for this purpose a pro-forma which will be forwarded to them by the Embassy on request. It is pointed out that it is in the interest of the creditors to carry out this notification of their claims as soon as possible.

Gonville and Caius College, Cambridge

Scholarships for the Study of Law

Entrance scholarships offered annually by Gonville and Caius College, Cambridge, include W. M. Tapp Scholarships and Philip Teichman Scholarships for candidates who intend to read law. Holders of these scholarships may take both parts of the Law Tripos or one part of that Tripos and a part of a Tripos in another suitable subject. The maximum value of the scholarships is £100 a year. They are eligible for supplementation by the Ministry of Education or the Scottish Education Department on the same conditions as state scholarships. Particulars of the entrance scholarships and supplementations may be obtained from the Senior Tutor, Gonville and Caius College, Cambridge. Entries must be sent in by October for the scholarship examination to be held in the following December. The scholarship examination does not include law but may be taken in any of the specified subjects. Similar scholarships may be awarded to undergraduates in residence at the college who gain a high place either in the Law Tripos examination or in another Tripos examination and then intend to read for a part of the Law Tripos. Holders of the scholarships may be considered for W. M. Tapp Post-Graduate Scholarships of a maximum value of £200 a year tenable for a period not exceeding three years while the holder is qualifying as a barrister or articled to a solicitor after ceasing to be a resident member of the college.

OBITUARY

MR. J. F. CHILD

Mr. John Faulkner Child, retired solicitor, of Henley-on-Thames, has died at the age of 81. He was admitted in 1894 and was chairman of the Henley Water Company for eight years.

MR. H. WORDEN

Mr. Harold Worden, J.P., solicitor, of Blackpool, died recently, aged 65. He was admitted in 1913.

SOCIETIES

THE SOLICITORS' MANAGING CLERKS' ASSOCIATION

The fifty-ninth annual general meeting of the Association was held at the Old Hall, Lincoln's Inn, London, W.C.2, on Friday, 20th June, 1952, at 6.15 p.m. The President, Mr. Arthur Bird, was in the chair.

In his presidential address, Mr. Arthur Bird said that 1951 was a year of activity unsurpassed in the history of the Association. It had seen the appointment of three new committees. All the members of the Council had faithfully and diligently worked for the Association. The *Gazette* had recorded 140 new members in the course of the year, and the President added there was ample margin for improvement and estimated the total of managing clerks at approximately 20,000. A new and improved accounting system, of the utmost importance in view of the expansion of the Association, had been introduced as from 1st January, 1951, and he felt sure that it would be of permanent benefit to the Association. Much alertness and activity had been shown with regard to submitting reports to Royal Commissions' inquiries and in considering the effect of Parliamentary Bills upon managing clerks. A memorandum on the practice and procedure of the courts and on the law of intestacy had been delivered, and many recommendations put forward by the Association appeared to have been incorporated in the report issued by the committee. A long report on the taxation of profits and income had been delivered. Representations had been made in regard to the important subject of solicitors' costs. A special committee of the Association had delivered to The Law Society a memorandum on the recruitment of clerks into the legal profession. The President felt himself under a trust of confidence not to disclose the full terms thereof, but indicated that recommendations respecting a tentative scale of salaries for each class of clerk had been included, and also in regard to hours, bonuses, pensions, etc. Upon the invitation of the Lord Chancellor's office, Mr. John Smeaton, a member of the Council of the Association, had been nominated to serve upon the Lord Chancellor's Committee on Hours of Work in the Supreme Court Offices and had given generously of his time in regard thereto.

The President referred to the first National Conference, held in May, 1951, which successful event made history in the life of the Association, and continued that a few days ago the second of such conferences took place at Bournemouth, where the attendance was even better. For the first time a civic reception had been accorded to the Association's members by the Mayor of Bournemouth.

Mr. H. J. Elliott, the Honorary Treasurer, in presenting the accounts for the year ended 31st December, 1951, drew attention to the deficit of £230 15s. 9d. The adverse balance was, however, minimised by the substantial refund due to the Association from the examination account administered by The Law Society and the Solicitors' Managing Clerks' Association. This, however, was a non-recurring item. Upon the expenditure side of the account, the Honorary Treasurer observed the Association had spent nearly £1,000 more than in 1950, which was attributable to the continued activities of the Association, the increase of wages made necessary by the high cost of living and by a continued rise in prices of stationery and other materials and services.

The following were elected to the Council: Messrs. E. C. Coles, Wm. C. Gibbs, D. C. Bowhill, L. J. Burgin, J. C. Hall, W. A. Bryant, L. F. Vallé, John Reed, H. A. Morris, R. G. A. Course, J. W. Hayward and L. W. Patrick.

Mr. Hammond then proposed that Mr. John W. W. Sachs be elected as President of the Association for the year 1952. Mr. Wm. C. Gibbs seconded the motion, which was carried unanimously. The President then invited Mr. Sachs to address the meeting.

Mr. Sachs said that he appealed, as Presidents had done in past years, for a considerable increase in membership of the Association, which he felt was a matter to which individual members were peculiarly able to contribute. It was, he said, the only Association for the protection of managing clerks' interests and all eligible managing clerks ought to join. It was a good thing for the Council to know the views of the members on various matters, and the first opportunity of meeting members would be at the festival dinner on 30th October. He hoped and trusted that members would come and bring their friends. He suggested that an informal reception at which members could meet Council members over a cup of tea might be a useful addition to the social activities of the Association. The newly instituted annual conference was, he thought, worthy of continuation, but it should extend over a longer period, possibly Easter or Whitsun.

Mr. Arthur Bird was unanimously elected as a Vice-President of the Association, and Messrs. Peat, Marwick, Mitchell & Co. were unanimously re-elected as honorary auditors for 1952.

The Honorary Secretary was called upon to read a notice of motion given by Mr. A. H. Savage in the following terms: "That the policy of the Association should be determined by the members at regular meetings held for that purpose." Mr. Hare, of London, formally seconded the motion.

Mr. Savage said that the Association's interests were very limited and criticised the set-up of the Association, but said that the Council formed the policy of the Association and carried it out, as was evidenced by the report. He expressed the opinion that the general policy should come from the members, and he thought the constitution was in need of amendment. He added, however, that he did not know how it should be amended. The President invited the seconder of the motion to speak in support thereof, but Mr. Hare declined the invitation, giving as his reason the desire to wind up the discussion. Mr. F. T. Adams, of London, led the opposition, and after some discussion the President ruled that the matter as developed by Mr. Savage was out of order, and he could not allow further discussion.

ASSOCIATION OF LIBERAL LAWYERS

The Association of Liberal Lawyers is holding its inaugural meeting on Wednesday, 23rd July, 1952, in the Niblett Hall, 3 (North) King's Bench Walk, The Temple, E.C.4, at 6 p.m., with Sir Arthur Comyns Carr, Q.C., in the chair. Members of either side of the profession who are Liberals will be welcome. The honorary secretaries are Mr. S. Lewis Langdon, of 4 Brick Court, The Temple, E.C.4, and Mr. Peter Hurd, of 7 Montagu Street, W.1.

The Fifth Annual General Meeting of the SOCIETY OF LOCAL GOVERNMENT BARRISTERS took place on 6th June, at the Council Room of the General Council of the Bar, Lincoln's Inn, when the following officers were appointed for the current year: Chairman, Mr. T. T. Thorpe (Potters Bar); Vice-Chairman, Mr. R. J. Roddis (Eastleigh); Hon. Treasurer, Mr. D. Evan Davies (Oadby). In addition to the foregoing, the following were elected to the Executive Committee: Messrs. G. T. Giles, A. Hatt, J. M. James, E. J. Lamb, B. A. Payton and H. O. Roberts.

As a result of amendments to the constitution, barristers employed whole time as clerks of river boards or as members of clerks' departments of such boards are, for the first time, eligible (in the same way as barrister clerks or members of clerks' departments of other local authorities) for membership of the Society; while student membership is now open to persons in clerks' departments of local authorities who are students of one or other of the Four Inns but not yet called to the Bar.

The Hon. Secretary of the Society is Mr. C. Richard Wannell, "Greenelm," Bramley Road, Southgate, N.14.

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).